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reformation of the instrument on the ground of fraud. To so hold, would open the door to fraud in innumerable cases, and negative the usefulness of written instruments, as each would have to run the gauntlet of "slippery memory" and actual misrepresentation.

FRAUD—CONCEALMENT—OBLIGATION TO DISCLOSE FACTS.—The plaintiff agreed to a settlement and release of all interest in the estate of her deceased father in reliance upon the representations of the defendant's lawyer, who failed to divulge certain facts that would have materially affected her decisions with regard to the advisability of such an agreement, and who also made certain affirmative representations calculated to give her an erroneous impression of the facts. *Held*, the agreement is not binding. *Brager v. Friedenwald* (Md.), 97 Atl. 515.

Where one is under no legal obligation to speak, his silence or the nondisclosure of a material fact will not justify rescission of the contract by the other party. *Harris v. Tyson*, 24 Pa. St. 347, 64 Am. Dec. 661; *Smith v. Beatty*, 37 N. C. 456, 40 Am. Dec. 435. This was so held where the defendant had let a house to the plaintiff, which he knew was required for immediate occupation, without disclosing the fact that it was in a ruinous condition, and without any warranty either express or implied with regard to it. *Keates v. Lord Cadogan*, 10 C. B. 591.

But a distinction must be made between these cases and those in which the facts concealed are peculiarly within the knowledge of the person concealing them, and which, under the circumstances, he is bound in good faith to disclose; as where the defendant sold to the plaintiff cattle that were suffering from a latent disease, the existence of which was known to the defendant at the time of the sale, but not disclosed to the plaintiff. See *Fitzhugh v. Nirschl* (Ore.), 151 Pac. 735.

And if the silence or nondisclosure renders false that which may have been truly stated, and the suppression of the facts is therefore calculated to convey a false impression, an action for fraud will lie. *Lomerson v. Johnston*, 47 N. J. Eq. 312, 20 Atl. 675, 24 Am. St. Rep. 410; *Kronfeld v. Missal* (Conn.), 89 Atl. 95. See *Peek v. Gurney*, L. R. 6 H. L. 377, 407. Thus, the buyer was allowed to recover damages for the seller's false representations where the government survey of certain property showed, to the knowledge of the defendant, a discrepancy in acreage from the number stipulated in the deed given by him to the plaintiff describing the land as a certain quarter section containing 160 acres, more or less, as shown by the government survey. *Miller v. Wissert*, 38 Okla. 808, 134 Pac. 62.

Nondisclosure or concealment is equivalent to false representation where active steps are taken to prevent a discovery of the facts concealed. *Crompton v. Beedle*, 83 Vt. 287, 75 Atl. 331, 30 L. R. A. (N. S.), 748, Ann. Cas. 1912A, 399. Thus, where the defendant had discovered a remarkable cave formation under property for the purchase of which he was negotiating, a rescission of the sale was permitted because he had attempted to conceal the entrance with brush in order that the plaintiff might not become aware of its actual value. *Merchants Bank v. Campbell*, 75 Va. 455.